

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MAXIMILIAN KLEIN and PETER LUTZ

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Appeal No. 2002-1392  
Application No. 09/390,996

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HEARD: February 19, 2003

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Before GROSS, LEVY, and SAADAT, Administrative Patent Judges.  
GROSS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 8, 9, 12 through 14, and 21 through 27.

Appellants' invention relates to a device for detecting states of movement of a user's body and for generating signals corresponding to the results of the detection. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A device for detecting certain states of movement of a body of a user and for generating signals corresponding to a result of a detection for subsequent processing in a data processing system, comprising:

a bearing device for supporting the body of the user;

said bearing device further comprising a support unit mounted in a tiltable manner on a base part;

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said support unit comprising a standing part;

said standing part having a support surface for supporting the body of the user; and

a sensor device for detecting a direction and a magnitude of a position of a projection of the body's center of gravity into the support surface relative to a predetermined original position in the support surface,

wherein the direction and the magnitude of the tilt of the support surface are detected for generating corresponding sensor signals,

wherein the support surface is mounted on the base part of said bearing device such that it can either rotate about an axis or move in a direction which is parallel to said axis,

said axis being one of:

vertically oriented when the support surface is oriented horizontally,

perpendicular to at least the support surface,

running through at least the base part and the support surface when the support surface is not tilted,

running through at least the support surface and a tiltable mounting, or

running through at least the base part and a tiltable mounting,

wherein the sensor device detects either the direction and the magnitude of a rotational movement of the body of the user about the axis or detects at least the magnitude of a vertical movement of the body's center of gravity, and generates corresponding sensor signals.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Furtado et al. (Furtado)	5,049,079	Sep. 17, 1991
Ward et al. (Ward)	5,283,555	Feb. 01, 1994

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McShane et al. (McShane)                      5,613,690                      Mar. 25, 1997

Lipps et al. (Lipps)                      5,860,861                      Jan. 19, 1999  
Claims 1, 8, 12, and 25 through 27 stand rejected under 35

U.S.C. § 102(e) as being anticipated by Lipps.

Claims 9, 13, 14, and 22 stand rejected under 35 U.S.C.  
§ 103 as being unpatentable over Lipps in view of McShane.

Claims 21 and 23 stand rejected under 35 U.S.C. § 103 as  
being unpatentable over Lipps in view of Furtado.

Claim 24 stands rejected under 35 U.S.C. § 103 as being  
unpatentable over Lipps in view of Ward.

Reference is made to the Examiner's Answer (Paper No. 24,  
mailed November 7, 2001) for the examiner's complete reasoning in  
support of the rejections, and to appellants' Brief (Paper No.  
23, filed September 21, 2001) and Reply Brief (Paper No. 25,  
filed January 7, 2002) for appellants' arguments thereagainst.

#### OPINION

We have carefully considered the claims, the applied prior  
art references, and the respective positions articulated by  
appellants and the examiner. As a consequence of our review, we  
will reverse both the anticipation rejection of claims 1, 8, 12,  
and 25 through 27 and also the obviousness rejections of claims  
9, 13, 14, and 21 through 24.

Regarding the anticipation rejection of claims 1, 8, 12, and  
25 through 27, we find nothing in Lipps that would correspond to

the claimed rotation about an axis or movement in a direction which is parallel to the axis. As explained by appellants (Brief, pages 18-23), Lipps fails to disclose either rotation about or movement in a direction parallel to any of the axes set forth in claim 1. The examiner asserts (Answer, page 7) that Lipps' additional switch to detect downward pitching of the rear portion 52 of the platform 26 and rubber bushings 72 in combination with spring 76 suggest that the platform can move parallel to a vertical axis. We disagree.

As clearly explained by appellants (Brief, page 19), the downward pitching of the rear portion in Lipps represents a tilting movement rather than a movement in a vertical direction. Thus, the switch detects such a tilting movement. Furthermore, although the rubber bushings may compress slightly, we would have to resort to speculation as to whether the resultant movement of the support surface would be sufficient to satisfy the claimed vertical movement. Similarly, we would have to resort to speculation as to whether the above mentioned switch would detect the magnitude of the vertical movement that would correspond to the compression of the bushings, as required by the last paragraph of claim 1. Additionally, Lipps does not disclose any other members that would detect such movement. Therefore, even if the support surface could be considered to move in a direction

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parallel to a vertical axis because of compression of the rubber bushings, Lipps fails to meet each and every element of the claims. Consequently, we cannot sustain the rejection under 35 U.S.C. § 102 of claims 1, 8, 12, and 25 through 27.

As to claims 9, 13, 14, and 22, the examiner combines McShane with Lipps. However, McShane fails to cure the deficiencies of Lipps. Accordingly, we will not sustain the rejection of claims 9, 13, 14, and 22 under 35 U.S.C. § 103.

The examiner combines Furtado with Lipps to reject claims 21 and 23. Similar to McShane, Furtado fails to overcome the shortcomings of Lipps. Therefore, we will not sustain the obviousness rejection of claims 21 and 23.

Ward, which the examiner combines with Lipps to reject claim 24, also fails to overcome the above-noted deficiencies of Lipps. Accordingly, we cannot sustain the rejection of claim 24 under 35 U.S.C. § 103.

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CONCLUSION

The decision of the examiner rejecting claims 1, 8, 12, and 25 through 27 under 35 U.S.C. § 102(e) and claims 9, 13, 14, and 21 through 24 under 35 U.S.C. § 103 is reversed.

REVERSED

ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
STUART S. LEVY	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS
	)	AND
	)	INTERFERENCES
	)	
	)	
MAHSHID D. SAADAT	)	
Administrative Patent Judge	)	

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